

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A. DREW)
EDMONDSON, in his capacity as ATTORNEY)
GENERAL OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT, in his)
capacity as the TRUSTEE FOR NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,

vs.

TYSON FOODS, INC., TYSON POULTRY, INC.,)
TYSON CHICKEN, INC., COBB-VANTRESS,)
INC., CAL-MAINE FOODS, INC., CAL-MAINE)
FARMS, INC., CARGILL, INC., CARGILL)
TURKEY PRODUCTION, LLC, GEORGE'S, INC.,)
GEORGE'S FARMS, INC., PETERSON FARMS,)
INC., SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)

Defendants.

Case No. 05-CV-329-GKF-PJC

OPINION AND ORDER

This matter comes before the Court on the State of Oklahoma's Motion for Leave to Serve Rebuttal Expert Reports [Docket No. 1819]. The State currently seeks leave to file three rebuttal expert reports and states that it “may seek leave to file one or more rebuttal expert reports, and the State reserves all rights to do so.”

The issue of whether rebuttal expert reports would be permitted arose at a hearing held before the magistrate judge on October 8, 2008. In his Opinion and Order entered October 28, 2008, the magistrate judge wrote:

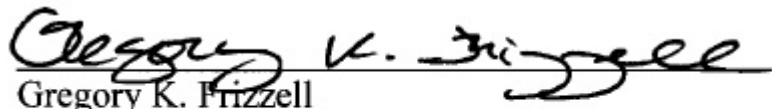
There is no provision in the scheduling order for rebuttal expert reports by either side so none should be expected.
The State suggests that, because it should be permitted to rebut defendants’ experts, the Court’s task

of exercising its discretion as to such rebuttal testimony would be greatly facilitated by having rebuttal expert reports to review. The State also suggests that the defendants' trial preparation would be aided by having advance notice of the scope of the State's intended rebuttal evidence by means of expert rebuttal reports. Defendants oppose "adding another round of expert work and rebuttal reports" not previously contemplated by the pre-trial scheduling order. They argue that the addition of heretofore-unscheduled rebuttal reports would prejudice them and likely cause a further delay in the trial.

Upon review of the briefs and arguments of counsel, this Court concludes that the motion to permit rebuttal expert reports should be denied. To alter the course previously plotted by the scheduling orders entered by the magistrate judge and permit rebuttal expert reports (and, presumably, sur-rebuttal expert reports) at this late date would unduly increase the cost of this litigation and delay its ultimate resolution. Rebuttal expert testimony will be permitted at trial to the extent it constitutes true rebuttal.

WHEREFORE, the State of Oklahoma's Motion for Leave to Serve Rebuttal Expert Reports [Docket No. 1819] is denied.

IT IS SO ORDERED this 29th day of January, 2009.


Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma